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PART II—Section 3

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No. 311] NEW DELHI, FRIDAY, DECEMBER 31, 1954

ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 29th December 1954

NOTICE UNDER CLAUSE (b) OF SUB-SECTION (3) OF SECTION 110 OF THE REPRESENTATION OF THE PEOPLE ACT, 1951 (XLIH OF 1951)

S.R.O. 3682.—Notice is hereby given under clause (b) of sub-section (3) of section 110 of the Representation of the People Act, 1951 (XLIH of 1951), that the Election Commission has, in exercise of the powers conferred by section 108 of the said Act, granted leave to Shrimati Sadhana Shastri, wife of Shri Raja Ram Shastri, resident of 11/255 Souterganj, Kanpur to withdraw the election petition, dated the 16th July, 1954, duly presented by her under Part VI of the said Act, calling in question the validity of the election of Shri Shiva Narain Tandon, 21/24 Chatai Mohal, Kanpur, as a member of the House of the People from the Kanpur District (Central) Parliamentary Constituency of that House.

[No. 82/28/54/20161.]

S.R.O. 3683.—In continuation of the Election Commission's notification No. 19/224/52-Elec.III/17292, dated the 18th October, 1954, published in the *Gazette of India Extraordinary*, Part II, Section 3, dated the 11th November, 1954 (S.R.O. 3391), under section 108 of the Representation of the People Act, 1951 (XLIH of 1951), the Election Commission hereby publishes the Judgment of the Supreme Court of India delivered by it on the 28th September, 1954, on the appeal filed before that Court by Shri Hari Shanker Prasad of Gorakhpur, against the judgment and order of the Election Tribunal, Gorakhpur, dated the 31st March, 1954, in election petition No. 224 of 1952.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 157 OF 1954

Hari Shanker Prasad Gupta—Appellant

Versus

Shibban Lal Saksena—Respondent.

(Appeal by Special Leave granted by this Court on the 26th April, 1954 against the Judgment and Order, dated the 31st March, 1954 of the Election Tribunal, Gorakhpur in Election Petition No. 224 of 1952.)

The 28th day of September, 1954

PRESENT

The Hon'ble Mr. Chief Justice Mehr Chand Mahajan.

The Hon'ble Mr. Justice Bijan Kumar Mukherjea.

The Hon'ble Mr. Justice Sudhi Ranjan Das.

The Hon'ble Mr. Justice Vivian Bose.

The Hon'ble Mr. Justice Ghulam Hasan.

For the Appellant—Mr. N. C. Chatterjee, Senior Advocate (Mr. N. H. Hingorani, Advocate, with him).

For Respondent No. 1—Mr. S. P. Sinha, Senior Advocate (Messrs. Niharendu Dutt Majumdar, R. Patnaik and Ganpat Rai, Advocates, with him).

JUDGMENT

The Judgment of the Court was delivered by

BOSE, J.—The Election Tribunal of Gorakhpur has declared the election of the appellant Hari Shanker void under section 100(2) of the Representation of the People Act, 1950 (XLIII of 1950), because of major corrupt practices within the meaning of section 123(8).

The allegation in the petition is that the appellant engaged the services of a very large number of persons who were serving under the Government of the State of Uttar Pradesh. The Tribunal has examined each separate allegation in detail but it will not be necessary for us to do that as one case will suffice. Among the many persons said to have been engaged as polling agents and canvassers is one Mangal Das. He is a Mukhia. The Tribunal holds that he not only acted as a polling agent but also canvassed. Mr. Chatterji contended on behalf of the appellant that that was not the finding but we are clear that it is.

The Chairman and Shri Sukhdeo Prasad first say—

"Ram Chander Parsad has.....stated on oath that he had seen Mangal Das, Mukhia, actually canvassing for the Respondent No. 1 (appellant here) at Rajmandil polling station on the polling day."

Later they say—

"Sri Diriyodhan Parsad (P.W. 3) actually saw Mangal Das.....Mukhia of Jarrar canvassing for the Respondent No. 1 during this election period."

Their conclusion on this part of the case is—

"We hold therefore that Sri Kishen Das and Mangal Das, Mukhias.....worked as polling agents and as canvassers for the Respondent No. 1."

Mr. Chatterji relied on an earlier passage which says—

"We therefore come to the conclusion that the petitioner has proved in this case that Mangal Das, Mukhia.....worked as polling agent of the Respondent No. 1....."

and he argued from this that the Tribunal assumed that a polling agent was also a canvasser. We are clear that that is not correct. In the passage just quoted the Tribunal were rebutting the argument advanced on behalf of the appellant that Mangal Das was not even his polling agent. They examine the evidence about this and hold that he was. They also examined the two witnesses who said that in addition to this he canvassed and their conclusion is that he also canvassed.

It is proved that Mangal Das was a Mukhia. Grish Chander, the Registrar Qannungo, Maharajganj, produced the register of Mukhias maintained in accordance with the provisions of the Land Records Manual. He proves from the register that Mangal Das was appointed a Mukhia of Jarar on 15th December, 1947 and that he still holds office.

We were shown extracts from the Rules in accordance with which these registers are kept. They are Rules framed to accord with section 45 of the Criminal Procedure Code which requires village headman to be appointed and sets out their duties. These headmen are appointed by the District Magistrate and can be dismissed by him. They are known locally as Mukhias but their official designation in the Rules is village headmen.

The Tribunal has examined the meaning of the words "serving under the Government of any State" used in section 123(8) at great length. We find it unnecessary to do so because the explanation enlarges the definition to include "a village headman or any other village officer, by whatever name he is called". As it is proved that Mangal Das was a village headman, and in any event a

village officer, he falls within the definition and so the appellant's action in permitting him to canvas for him is a major corrupt practice under section 123(8) and that entails a declaration under section 100(2)(b) to the effect that the appellant's election is void. The argument that as Mangal Das was not paid by the State he cannot be in the service of the State is not sound, for payment is not the test. All that is required under the definition is that he should be a headman employed in the State, and that Mangal Das was.

No other point need be discussed. The appeal fails and is dismissed with costs.

(Sd.) MEHR CHAND MAHAJAN, C.J.

(Sd.) B. K. MUKHERJEA, J.

(Sd.) S. R. DAS, J.

(Sd.) VIVIAN BOSE, J.

(Sd.) GHULAM HASAN, J.

28th September, 1954.

[No. 19/224/52-Elec.III/20118.]

By Order,

K. S. RAJAGOPALAN, Asstt. Secy.

